IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ARMAN G. SHIRAZI, :

21 1 1155

Plaintiff, : CIVIL ACTION NO. 3:11-cv-141

V.

NANDA PALISSERY, Esq., et al., : (JUDGE CAPUTO)

:

: (MAGISTRATE JUDGE BLEWITT)

Defendants.

MEMORANDUM

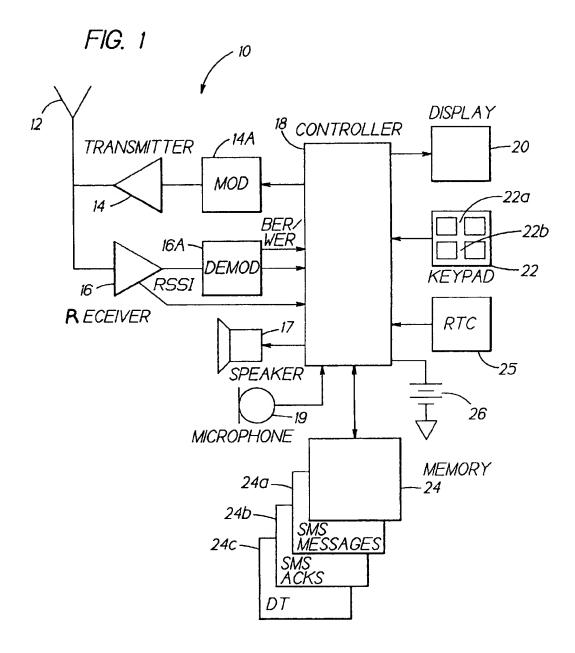
Presently before the Court is Magistrate Judge Blewitt's Report and Recommendation ("R & R") of January 31, 2011 (Doc. 6), Plaintiff's objections (Doc. 8), and a motion for leave to proceed *in forma pauperis* (Doc. 2). Magistrate Judge Blewitt recommended that Plaintiff's motion to proceed *in forma pauperis* be granted solely for the purpose of filing this action but that Plaintiff's claims be dismissed against all three Defendants for failure to state a claim, lack of subject-matter jurisdiction, and on preclusion grounds. This Court will adopt Magistrate Judge Blewitt's R & R and dismiss Plaintiff's complaint with prejudice for the reasons discussed more fully below.

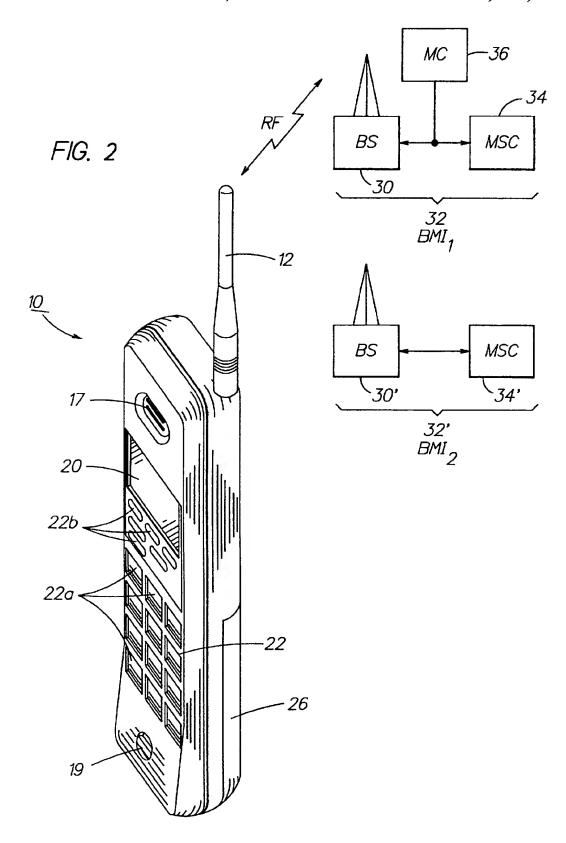
BACKGROUND

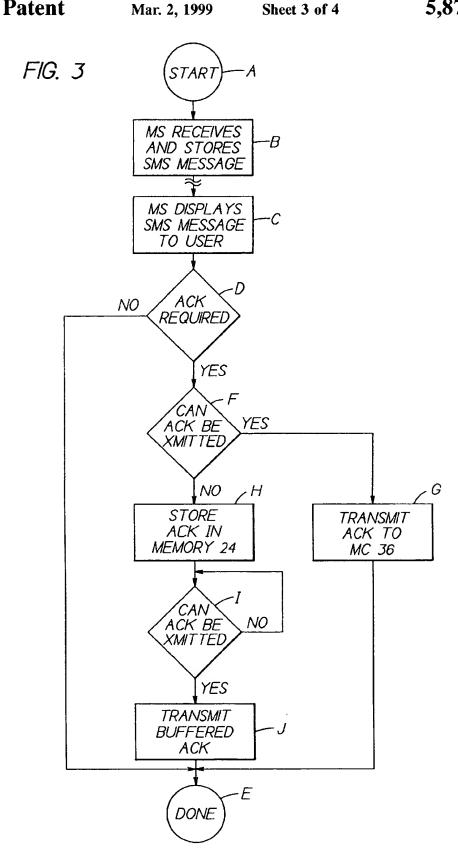
Plaintiff, an inmate of SCI-Frackville, Frackville, Pennsylvania, filed a *pro se* civil rights action pursuant to 42 U.S.C. § 1983 alleging the following.

Plaintiff was charged with a homicide in May 2007 in the Court of Common Pleas of Philadelphia County, and retained Defendants to defend him, namely Attorney Nanda Palissery and Attorney Demetrius Fannick, both employed by the Palissery Law Firm. Plaintiff signed a General Fee Agreement ("GFA") in which he agreed to pay Defendants

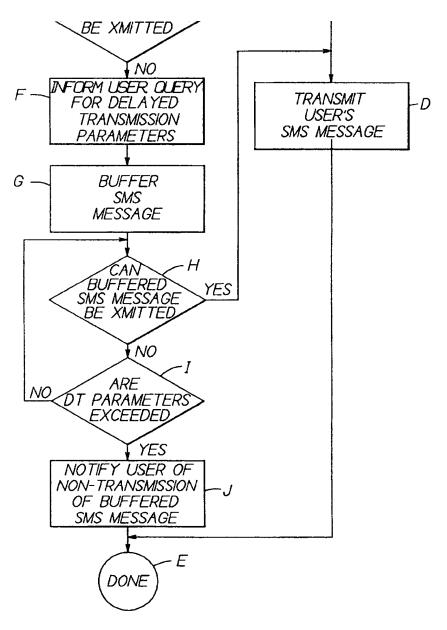
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motion to dismiss. *Id.* The Court need not assume the plaintiff can prove facts that were not alleged in the complaint, *see City of Pittsburgh v. W. Penn Power Co.*, 147 F.3d 256, 263 & n.13 (3d Cir. 1998), or credit a complaint's "'bald assertions'" or "'legal conclusions," *Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 906 (3d Cir. 1997) (quoting *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1429-30 (3d Cir. 1997)). "While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations."



to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress With respect to the filing of objections to a Magistrate Judge's R&R, Local Rule 72.3 states: ""[W]ritten objections ... shall *specifically* identify the portions of the proposed findings, recommendations or report to which objection is made and the *basis* for such objections." (emphasis added.) Here, other than general entreaties to "justice" and "fairness," Plaintiff has failed to specify either the portions of the record that she is objecting to or the reasons for her objections.

In a § 1983 civil rights action, the Plaintiff must prove the following two essential elements: (1) that the conduct complained of was committed by a person acting under color of state law; and (2) that the conduct complained of deprived the Plaintiff of rights, privileges or immunities secured by the law or the Constitution of the United States. *Parratt v. Taylor*, 451 U.S. 527 (1981); *Kost v.Kozakiewicz*, 1 F. 3d 176, 184 (3d Cir. 1993).

Purely private transactions between attorneys and clients are incapable of supporting a claim for redress under § 1983. *See, e.g., Flagg Bros. v. Brooks*, 436 U.S. 149, 164-66 (1978) (holding that private business transactions do not qualify as state action regardless of whether state statutes expressly authorize them); *Rosquist v. Jarrat Const. Corp.*, 570 F.Supp. 1206, 1211 (D.N.J.1983) ("[T]he actions taken by private attorneys in representing their clients do not constitute state action."). As a result, Plaintiff's complaint will be dismissed for failure to state a claim.

Additionally, Plaintiff's suit is barred under the *Rooker-Feldman* doctrine.

The Rooker-Feldman doctrine embodies the principles set forth in *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 362 (1923), and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983). Section 1257 of Title 28 of the United States Code confers on the United States Supreme Court appellate jurisdiction to review final judgments of the states' highest courts. The *Rooker-Feldman* doctrine is the

doctrine that, by negative implication, inferior federal courts lack subject matter jurisdiction to review final judgements of the states' highest courts. *E.B. v. Verniero*, 119 F.3d 1077, 1090 (3d Cir.1997). The Rooker-Feldman doctrine has been interpreted to also apply to final decisions of lower state courts. *Id.* "District courts lack subject matter jurisdiction once a state court has adjudicated an issue because Congress has conferred only original jurisdiction, not appellate jurisdiction, on the district courts." *In re Gen. Motors Corp. Products Liability Litig.*, 134 F.3d 133, 143 (3d Cir.1998). The existence of a state court judgment in another case bars a subsequent federal proceeding under Rooker-Feldman "when entertaining the federal court claim would be the equivalent of an appellate review of that order." *FOCUS v. Allegheny County Court of Common Pleas*, 75 F.3d 834, 840 (3d Cir.1996). "Under the Rooker-Feldman doctrine, lower federal courts cannot entertain constitutional claims that have been previously adjudicated in state court or that are inextricably intertwined with a state adjudication." *Whiteford v. Reed*, 155 F.3d 671, 673-74 (3d Cir.1998).

Kline v. U.S. Bank, N.A., 2010 WL 703255, *7-*8 (M.D. Pa.). Here, adjudicating Plaintiff's "constitutional claim," such as it is, would require this Court to engage in an appellate review of the actions of the state trial and appellate courts. This is clearly forbidden under the *Rooker-Feldman* doctrine.

CONCLUSION

For the reasons stated above, Plaintiff's complaint will be dismissed. An appropriate order follows.

4/29/11/s/ A. Richard CaputoDateA. Richard CaputoUnited States District Judge

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Plaintiff,

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NANDA PALISSERY, Esq., et al., : (JUDGE CAPUTO)

Defendants. :

(MAGISTRATE JUDGE BLEWITT)

ORDER

NOW, this <u>29th</u> day of April, 2011, after consideration of Magistrate Judge Blewitt's Report and Recommendation (Doc. 6) recommending that Plaintiff's motion to proceed *in forma pauperis* (Docs. 2) be granted solely for purposes of filing this action and that Plaintiff's complaint (Doc. 1) be dismissed with prejudice, as well as Plaintiff's objections, **IT IS HEREBY ORDERED THAT**:

- 1. Plaintiff's motion to proceed *in forma pauperis* is **GRANTED** solely for the purposes of filing this action.
- 2. Plaintiff's objections are **OVERRULED**.
- 3. The Report and Recommendation is **ADOPTED**.
- 4. The complaint is **DISMISSED** with prejudice.

5. The Clerk of the Court is to mark the matter in this Court **CLOSED**.

/s/ A. Richard Caputo

A. Richard Caputo
United States District Judge